

# PIPELINE SAFETY CONTRACT

Project Solutions

11-2610-009

**RECEIVED**

APR 25 2011

STATE OF SOUTH DAKOTA - CONSULTING CONTRACT

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

Agreement made and entered into this 22<sup>nd</sup> day of April, 2011,  
by and between the South Dakota Public Utilities Commission, a state agency, at 500 E.  
Capitol Ave., Pierre, SD 57501, (the "State") and Project Solutions, Inc. at 3022 W. Saint  
Louis St., Rapid City, SD 57702 (the "Consultant").

The State hereby enters into this Agreement for services with Consultant in  
consideration of and pursuant to the terms and conditions set forth herein.

1. The Consultant will perform those services described in the Work Plan,  
attached hereto as Exhibit A and by this reference incorporated herein.

2. The Consultant's services under this Agreement shall commence on  
4/22/11 and end on 4/21/12, unless sooner terminated  
pursuant to the terms hereof.

3. The Consultant will not use State equipment, supplies or facilities. The  
Consultant's Employer Identification Number is

4. The State will make payment for services upon satisfactory completion of the  
services. The TOTAL CONTRACT AMOUNT is an amount not to exceed Twenty Eight  
Thousand, Three Hundred and Thirty Six Dollars and Ninety Eight Cents (\$28,336.98). The  
State will not pay Consultant's expenses as a separate item. Payment will be made pursuant  
to itemized invoices submitted with a signed state voucher.

5. The Consultant agrees to indemnify and hold the State of South Dakota, its  
officers, agents and employees, harmless from and against any and all actions, suits,  
damages, liability or other proceedings that may arise as the result of performing services  
hereunder. This section does not require the Consultant to be responsible for or defend  
against claims or damages arising solely from errors or omissions of the State, its  
officers, agents or employees.

6. The Consultant, at all times during the term of this Agreement, shall obtain and  
maintain in force insurance adequate for work of this nature. Insurance may include but is  
not limited to:

A. Commercial General Liability Insurance

B. Professional Liability Insurance or Miscellaneous Professional  
Liability Insurance

C. Business Automobile Liability Insurance

D. Worker's Compensation Insurance

Before beginning work under this Agreement, the Consultant shall furnish the State with properly executed Certificates of Insurance. Additionally, the Consultant shall furnish copies of insurance policies if requested by the State at any time during the term of this contract.

7. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

8. Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

9. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

10. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

11. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

14. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Consultant will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

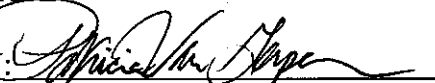
15. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Patricia Van Gerpen on behalf of the State, and by Sandra Burns, on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

16. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

17. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.


In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

BY:   
Patricia Van Gerpen  
Executive Director, PUC

4-26-11  
(DATE)

CONSULTANT

BY:   
Sandra Burns, Project Solutions, Inc.  
Project Manager

4/22/11  
(DATE)

### **Survey Firm Scope of Services:**

Contractor agrees to provide consulting services to the Staff of the South Dakota Public Utilities Commission (Commission) in docket: PS10-002, "In the Matter of the Filing by Commission Pipeline Safety Staff Regarding Damage Prevention Programs."

At a minimum, the Contractor shall:

- Develop a telephone survey to determine whether PHMSA characterization tool best practices not yet fully implemented in South Dakota should be included in pipeline operator and/or Commission damage prevention efforts throughout the state. Specifically, the Commission will provide multiple program examples as potential methods to accomplish full implementation. Contractor shall develop a telephone survey to evaluate and identify potential stakeholder participation in said programs, sample program effectiveness and corresponding challenges.
- Development of the survey shall include a determination of the proper telephone survey method and sample size of each currently identified stakeholder group. Currently identified stakeholder groups in the state shall include:
  - a. Commercial excavators
  - b. Professional utility locaters
  - c. Jurisdictional pipeline operators
  - d. Interstate hazardous liquids operators
  - e. Electric, phone, cable, water and other underground utilities
  - f. Local government including cities and counties

Full lists of each stakeholder group will be sent electronically by Commission to Contractor.

- Development of the survey shall include a determination of the proper telephone survey method and proper sample size of other stakeholder groups as identified by Consultant not listed above.
- Fully execute survey and evaluate results to ensure completeness.
- Provide an expert witness to testify at the hearing/commission meeting and respond during the hearing/commission meeting and provide briefings in response to questions regarding the survey process.
- Prepare progress reports and final reports, as requested, for staff summarizing work completed and results found
- Coordinate and share survey results with other damage prevention consultant if requested by staff to ensure accurate collection and recording of required information.